

## STATEMENT OF CLAIMS STATUS

Claims 1-15 are pending in the application.

Claims 3 and 5-9 are withdrawn from consideration.

Claims 1, 2, 4 and 10-15 are rejected.

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## SUMMARY OF RESPONSE

### DETAILED ACTION

#### *Election/Restrictions*

1. The Examiner states: "Applicant's election of Species II (contacting includes spraying) in the reply filed on 9 February 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 3 and 5-9 are withdrawn from examination because they are drawn to non-elected species."

#### *Priority*

2. The Examiner states: "The priority date for the instant application is considered to be 30 May 2001 as to the method of contacting crop seeds and grains prior to planting the crop seeds and grains. This date is considered proper because a review of 6,523,298 did not disclose the use of crop seeds and grains prior to planting the crop seeds and grains.  
Additionally, the records of the PTO do not show 09/747,225 as a parent application of 60/294,374."

#### *Claim Rejections - 35 USC § 112*

3. The Examiner states: "Claims 10-13 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.  
The claims are improper and therefore indefinite because they add limitations to an independent claim (claim 1) which uses the transitional "consisting of." A claim which depends from a claim which "consists of" the recited elements or steps cannot add an element or step (see MPEP 2111.03)."

***Claim Rejections - 35 USC § 103***

4. The Examiner states: "Claims 1, 2,4, and 10-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stroll (Natural crop protection in the Tropics) in view Talbot et al. (US 5,139,561).

As to claims 1 and 15, Stroll discloses a method for protecting crop plants from destruction by insect, fungus, bacteria and other living organisms (first two paragraphs of "Methods of Use" section on page 2 of the printout) consisting of contacting the plant with an aqueous formulation containing only water and capsicum (first 2 paragraphs of "Methods of Use" section on page 2 of the printout). Not disclosed is applying the composition to crop seeds or grains prior to planting the crop. Talbot et al., however, teaches that a protective composition can be applied to plants or seeds(col. 2, lines 52-56; col. 4, example 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Stroll by applying to pre-plant seeds as disclosed by Talbot et al. so as to control pests at an early stage so as to promote healthy plant growth.

As to claim 2, Stroll as modified by Talbot et al. further disclose coating the seeds (encompassed in "seed dressing" of col. 2 lines 52-56 of Talbot et al).

As to claim 4, Stroll as modified by Talbot et al. further disclose spraying (first two paragraphs of "Methods of Use" section on page 2 of the printout).

As to claims 10-13, the limitations of Claim 1 are disclosed as described above. Not disclosed are method steps of drying the seeds in a chamber with a conveyor belt. Examiner takes official notice that it is old and notoriously well known in the agronomic art to dry the seeds in a chamber with a conveyor belt after a seed treatment. It would have been obvious to one of ordinary skill in

the art at the time of the invention to further modify the method of Stroll as modified by Talbot et al. by drying the seeds in a chamber with a conveyor belt after the treatment as a efficient method of coating seed.

As to claim 14, Stroll as modified by Talbot et al. further disclose contacting during emergence (from Stroll in that plants can be foliarly treated at any time)."

*Conclusion*

5. The Examiner states: "The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Babbini, Neumann ('572), Neumann ('298 B2), and Neumann ('436 A1) disclose in the art various methods with capsicum. Neumann discloses in the instant application's pre-grant publication."

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## CLAIMS AMENDMENT

Claim 1 (currently amended) A method for protecting crop seeds and grains between planting and emergence, from destruction or compromise by crop and agricultural insects, [fungus, bacteria and other living organisms,] the method [consisting] comprising the step of contacting the crop seeds and grains with an aqueous formulation containing only water and capsicum as the active ingredient prior to planting the crop seeds and grains.

Claim 2 (original) The method of claim 1 in which the step of contacting the crop seeds and grains includes coating the crop seeds and grains with the aqueous formulation.

Claim 3 (canceled)

Claim 4 (previously presented) The method of claim 2 in which the step of coating the crop seeds and grains includes spraying the crop seeds and grains with the aqueous formulation.

Claim 5 (canceled)

Claim 6 (canceled)

Claim 7 (canceled)

Claim 8 (canceled)

Claim 9 (canceled)

Claim 10 (original) The method of claim 1, further comprising the step of drying the seeds and grains following contact with the aqueous formulation.

Claim 11 (original) The method of claim 10, in which step of drying the seeds and grains utilizes circulating hot air.

Claim 12 (original) The method of claim 10, in which step of drying the seeds and grains comprises placing the seeds and grains into a drying chamber.

Claim 13 (original) The method of claim 12, further comprising using a conveyor belt for placing the seeds and grains into a drying chamber.

Claim 14 (original) A method for protecting germinating crop seeds and grains from destruction or compromise by crop and agricultural insects, [fungus, bacteria and other living organisms,] the method consisting of contacting the crop seeds and grains with an aqueous formulation containing only water and capsicum as the active ingredient during the time of emergence.

Claim 15 (previously presented) A method for protecting crop seeds and grains from pre-emergence destruction or compromise by crop and agricultural insects, [fungus, bacteria and other living organisms,] the method consisting of contacting the crop seeds and grains with an aqueous formulation containing only water and capsicum as the active ingredient prior to planting the crop seeds and grains.

Claim 16 (new) The method of claim 2 in which the step of coating the crop seeds and grains includes soaking the crop seeds and grains in the aqueous formulation.

Claim 17 (new) The method of claim 2 in which the step of coating the crop seeds and grains includes forming the aqueous formulation into a thickened paste and applying the paste as a coating to the seeds and grains.

Claim 18 (new) The method of claim 5 in which a sprayer is used in the step of applying the paste as a coating to the seeds and grains.

Claim 19 (new) The method of claim 2 in which the step of coating the crop seeds and grains includes vaporizing the aqueous formulation prior to contacting the crop seeds and grains therewith.

Claim 20 (new) The method of claim 7 in which the vapor is formed by boiling the aqueous solution.

Claim 21 (new) The method of claim 7 in which the vapor is formed by aerosolizing the aqueous solution.

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